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appeal pleadings) [redacted]

Δ/ East Brunswick's letter brief re:
Middle Union Assocs. v. Mayor/Twp Committee
of Twp of Holmdel w/ enclosure

~~transmittal~~ from 3/7/78

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March 7, 1978

Elizabeth McLaughlin, Clerk
Appellate Division
Superior Court of New Jersey
State House Annex
Trenton, New Jersey 08625

Re: Our File No. EB-183
Urban League of Greater New Brunswick, et al vs.
The Mayor and Council of the Borough of Carteret, et al
Docket No. A-4681-75

Dear Ms. McLaughlin:

By way of further supplementation of the Appellate Brief filed on behalf of the Township of East Brunswick in the above I enclose copy of the Appellate Division case in Middle Union Associates v. The Mayor and Township Committee of the Township of Holmdel, et al decided on April 22, 1977.

On behalf of the Township of East Brunswick, and presumably all of the defendants who were subjected to a specific number of low and moderate income housing units by the trial court, it is submitted that the Holmdel case, together with the previously submitted Prime Feather & Down Company - Marlboro case would not permit the imposition of formulaic requirements.

In Holmdel the trial court not only invalidated the municipality's zoning ordinance but also ordered its revision to provide for areas within the municipality in which 2,100 multi-family housing units for moderate and lower income groups would be a permitted use. The Appellate Division considered the population increase of over 100% between 1960 and 1970 together with acreage which was not built upon and raised, apparently for the first time, the question of whether agriculturally productive land should be regarded as undeveloped. The Appellate Division noted that there was no evidence concerning the percentage of the Holmdel working force who live in that community nor was there any analysis of sociological factors tending to generate population pressure on Holmdel.

While the Appellate Division agreed with the plaintiff that Holmdel was a developing community within the definition of that term given in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) and also agreed that a municipality must accept responsibility for those who are drawn to the community as a result of its solicitation of industry and commerce, nevertheless it stated:

> "We cannot, however, accept the formulaic approach adopted by the trial court when it ordered Holmdel to make provision in its zoning ordinance for 2100 housing units of the low or moderate income type. One must confront the substantial impact compliance with this order will have on the future development of this essentially rural and agricultural community."
> (Slip opinion page 10)

The court further noted that the record was devoid of evidence that any of the local residents or employees were either living in squalor, as in Mt. Laurel, or that they were inadequately housed. The court further stated as follows:

> "Although we have no doubt that many low and moderate income families would choose, if they could, to live in Holmdel, that fact alone does not, in our view, create the imperative need which would justify the breadth of the order under challenge and the impact on this community which is the principal subject of this appeal. It may be that the rate at which a particular municipality is developing, a reflection of the need for housing in the area, should govern to some extent the amount of housing for which provision should be made in its zoning ordinance. A municipality undergoing development of less than explosive proportions, although considered developing in the Mount Laurel context, may be required to make provision for fewer units of "least cost' housing than would a municipality resisting strong pressures for population influxby the exclusionary features of its zoning ordinance. Rate of development, and the need it reflects, may well be considered in the education determining 'fair share'. The requirement for 'least cost' housing may alter as rate of development changes; an ordinance is not immutable but must respond to changing needs and circumstances, need for housing being one of these circumstances."
> (Slip opinion, pages 11 and 12).

The court further criticized the record before the trial court. It found significant the fact that neither plaintiff's planner nor defendant's planner was asked to evaluate the theory of the other. In the trial of the Urban League case, Judge Furman simply asked for rebuttal planning testimony to be submitted in writing. East Brunswick submitted such evidence but there is no indication that the court relied upon it or even discounted it.

Of further significance is the court's refusal to accept the opinion of the plaintiff's expert that Monmouth County is the region to whose housing needs Holmdel must contribute its fair share. (Slip opinion page 16).

The deficiencies which the Appellate Division found with regard to the definition of region related to the failure to document "available" employment, failure to define arteries of transport or the probable areas from which the town's future population would be drawn and the percentage of low and moderate income families which could be expected from that influx. The Appellate Division found the delineation of the region to be the critical conclusion and with its rejection of that finding, the remainder of the trial order fell.

Again the Appellate Division repeated what had previously been stated by the Supreme Court in Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481 (1977). After the Appellate Divisin in Holmdel held that it was clearly in order for Holmdel to make certain zoning revisions, it stated as follows:

> "The amount of land so zoned and its location will, in the first instance, be committed to the good faith discretion of the governing body with whatever expert assistance they deem necessary, but under trial court supervision. The land so zoned to accommodate this mandated housing must, of necessity, be open and available land. Land suitable for food production should not have first priority as appropriate for high density housing; food may be as important as housing, if not to the local population, then to the country at large. The land selected should be appropriate to ' least cost' housing and should not present unusual topography of soil conditions productive only of increased housing costs. Consideration must be given to those persons presently working in the town who cannot afford to live there and to those who may be drawn by industrial or commercial enterprises planning to locate themselves in Holmdel; attraction of ratables carries with it an obligation to provide for those drawn by them to the town. Some attempts must be made to determine the needs of the locally housed elderly and young, and those of both categories who

> may be drawn to the town by employment or other factors. Size of the units zoned and other amenities should be determined with respect to the requirements of 'least cost' housing mandated by Oakwood at Madison, Inc., supra. Ecological and recreational needs must also receive consideration." (slip opinion pages 18 and 19).

The court declined to set a numerical goal as to the number of least cost units for which provision was required. It further noted that as needs become more apparent, provision could be made to satisfy them, if not by the Township then by the court, or a legislative body more suitable to the task. Accordingly the case was remanded to the trial court for further consideration of the revisions which Holmdel would be required to make. The court vacated that portion of the trial court opinion which required the construction of 2,100 units for low and moderate income housing.

Presumably the other municipal defendants who were subjected to a specific number of low and moderate income housing units by Judge Furman in the Urban League case join in this brief. For the reasons set forth above none of the defendants in the pending litigation should be required to zone for the construction of any specific number of units and each of them whose ordinance has been invalidated should be given the opportunity to present its own zoning revisions to the trial court.

Respectfully submitted,

Bertram E. Busch

BERTRAM E. BUSCH
East Brunswick Township Attorney

BEB/jkm
Enclosure
cc: All Attorneys of Record

CERTIFICATE OF SERVICE

I hereby certify that the required number of copies of the enclosed memorandum has been served upon all attorneys of record by ordinary mail on March 7, 1978. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

BERTRAM E. BUSCH

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3155-74
A-3257-74

MIDDLE UNION ASSOCIATES, a partnership,

Plaintiff-Respondent,
Cross-Appellant,

v.

THE MAYOR AND TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HOLMDEL, MONMOUTH COUNTY, NEW JERSEY,

Defendant-Appellant,
Cross-Respondent,

and

THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HOLMDEL,

Defendant-Respondent,

and

TOWNSHIP OF HAZLET,

Intervenor-Respondent.

Argued February 28, 1977 - Decided APR 2 2 1977

Before Judges Bischoff, Morgan and King.

On appeal from Superior Court, Law Division, Monmouth County.

Mr. Dean A. Gaver argued the cause for appellant (Messrs. Gagliano, Tucci and Kennedy, attorneys; Messrs. Hannoch, Weisman, Stern & Besser, of counsel; Mr. Eugene A. Iadanza, on the brief).

Mr. Alan J. Werksman argued the cause for respondent Middle Union Associates (Messrs. Werksman, Saffron, Cohen, Sylvester and Miller, attorneys; Mr. Eugene P. Sylvester, on the brief).

Mr. Martin M. Barger argued the cause for respondent Zoning Board of Adjustment of the Township of Holmdel (Messrs. Reussille, Cornwell, Mausner & Carotenuto, attorneys).

Mr. Marvin J. Brauth argued the cause for respondent Township of Hazlet (Mr. Francis X. Journick, attorney; Mr. Marvin Lehman, on the brief).

PER CURIAM

This is an exclusionary zoning case in which the trial court not only invalidated the municipality's zoning ordinance, but also ordered its revision to provide for areas within the municipality in which 2100 multi-family housing units for moderate and lower income groups will be a permitted use. The municipality appeals this ruling. The trial court also upheld the Zoning Board's denial of plaintiff's application for a use variance to construct multi-family units on land not zoned therefor and refused to invalidate the ordinance as it applied to plaintiff's land,

rejecting plaintiff's contention that the zoning ordinance, in its effect on plaintiff's land, confiscated all use thereof. Plaintiff cross-appeals from these two rulings. Following rendition of Oakwood at Madison, Inc. v. Township of Madison, --- N. J. --- (1977) (hereinafter Oakwood at Madison, Inc.), supplemental briefs were submitted and additional oral argument heard.

I.

Plaintiff's challenge to the validity of Holmdel's zoning ordinance.

The municipality, the Township of Holmdel, located in the northern part of Monmouth County, occupies a land area of 17.90 square miles (11,456 acres) with a resident population of approximately 7500 living in 1848 residences, only 23 of which are two-family houses. This represents a population increase of over 100% of the 1960 population of 2959. Approximately 7000 persons are publicly and privately employed within the Township.

Holmdel presently has 3917 acres of undeveloped land in its residential zones, 613 acres available in its commercial-industrial zones, and approximately 894 acres available in its offices/laboratory zones. On a substantial portion of this undeveloped land throughout the Township, totalling 4857 acres, active farming is being pursued with most of the farming taking place in the presently undeveloped residential zones.[1]

1. Quaere: Should agriculturally productive land be regarded as undeveloped?

The challenged zoning scheme includes two residential zones, R40A and R40B, both of which permit only single-family detached dwellings on one-acre lots; the two zones are distinguishable only on the basis of the minimum required square footage for residences. Multi-family dwellings are not permitted in any zone.

As a result of Holmdel's zoning scheme, new dwellings in the town are typically available only on an ownership basis at a cost well beyond the capability of most of its working population.[2] The record, however, is devoid of any statistical information concerning the percentage of the Holmdel working force who live in that community.[3] Also absent from the record is an analysis of sociological factors tending to generate population pressure on Holmdel. Most of the testimony in this regard viewed these pressures as being internal, stemming from Holmdel's efforts, successful for a time, at securing the entry of business and industry into the community. Workers induced to work in the town were therefore largely viewed as the source of population increase and the consequent necessity for housing units suitable to their needs.

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2. Evidence concerning the cost of older dwellings was excluded.

3. There was evidence that approximately 23% of the school work force resided in Holmdel.

Two planning experts testified, one for plaintiff and one for the Township. Harvey S. Moscowitz, testifying for plaintiff, presented the testimony adopted by the trial court in its final judgment. It was his opinion that Holmdel was a developing community and that the "region" from which Holmdel would draw its population was Monmouth County as a whole. The only factual basis for this opinion was the undisputed fact that 70% of those who live in the county work there. The relationship, however, between this statistical fact and his conclusion that the appropriate region was Monmouth County went unexplored. Based upon that conclusion and the information contained in a Department of Community Affairs publication which disclosed a need in Monmouth County for an additional 30,000 housing units for lower and moderate income people, he concluded that Holmdel's "fair share" thereof was 2100 units derived by multiplying the housing need figure by 7%, Holmdel's share of the jobs for Monmouth County. Put simply, he felt that Holmdel should provide the same proportion of the new lower and moderate income housing that its jobs bore to the total number of jobs in Monmouth County. This formula was adopted by the trial court and is the explanation for its final order that Holmdel redraft its ordinance to provide areas in which 2100 multi-family units could be built.

Moscowitz conceded that the proffered formula was not the only available one. "I think you would have to be particularly naive to say that this is the only way to do it." He noted that several alternative standards could be argued based, for example, on the ratio of Holmdel's population to the population of the county as a whole. The latter standard would result in Holmdel's fair share of housing being 1.3% of the low and moderate income housing market, or 390 units instead of 2100 units. Other alternatives mentioned by Moscowitz were those based upon the ratio of land space in Holmdel to the total land area of Monmouth County and, another, the relationship between housing units in Holmdel to the total number of households in Monmouth County, the latter resulting in Holmdel's fair share being 1.1% of total low and moderate income housing needs or 330 units. Of course, all of these alternatives are based upon Monmouth County being the appropriate region to which Holmdel must contribute its fair share of such housing. These alternatives were discounted by Moscowitz because of his view that "the heart of the matter is jobs versus housing." The alternatives, it was felt, reward a community which in the past has excluded multi-family housing and penalizes communities which encouraged such development. "Since you've got the ratables, you provide some of the housing."

None of these alternatives, however, was adopted by Robert G. Strong, defendant's expert planner. He was not asked to comment on the theory espoused by Moscowitz and adopted by the court; nor was Moscowitz asked to comment on Strong's theory which was that the appropriate region included those areas within a 30-minute driving range from sources of employment in Holmdel. All areas within that range could, according to his opinion, be considered the appropriate region. This formula was based upon studies conducted for comparable municipalities which disclosed to his satisfaction that approximately 80 to 90 percent of local residents and workers live and work within 30 minutes driving time between their residences and their places of work.

A survey of Strong's region, comprising areas within a 30 minute driving time from Holmdel, disclosed the existence therein of 125,000 rental units, as compared to a total of only 43,000 rental units in Monmouth County as a whole (1970 figures). No evidence was produced as to current vacancy rates in those 125,000 units; Strong's figure of a 5% vacancy rate for Monmouth County housing in 1970 was disputed, but no alternative rate was supplied.

In any event, Strong was of the opinion that Holmdel could not be viewed as a developing community. In his view a developing community was one which, "because of the circumstances

in and/or around it, is experiencing development and development pressures which are abnormal to the region in which it is located as a whole." Strong took the view that despite the substantial percentage increase in population since 1950, in absolute numbers the increase was not that startling. Thus, in 1950 Holmdel's population was roughly 1300 people; it increased to just short of 3000 people by 1960, for an absolute increase of only about 1600 people in 10 years. By 1970 it had increased to over 6000 people, for an absolute increase in a 10-year period of 3000 people. He did not regard this rate of growth as evidencing an explosive growth pattern being well below that of the county, the region and many other municipalities in the county.[4]

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4. Madison Township's growth was characterized as "explosive." Oakwood at Madison, Inc., slip opinion at 18. "During the past 25 years, it has experienced explosive growth. Its population increased over two decades by 561%, from 7,366 in 1950 to 48,715 in 1970. This boom has continued, with the population climbing to 50,000 by the time of the first trial and 55,000 by the second in 1974." Id.

   The population growth in Mount Laurel more nearly parallels that which occurred in Holmdel. In 1950, the township had a population of 2817. By 1960, the population had almost doubled to 5249 and by 1970 had more than doubled again to 11,221. Although, in absolute numerical terms only about 6000 new residents had located there in a 10-year period, that growth was thought sufficiently significant to warrant its being characterized as a "developing community."

Moreover, according to Strong, Holmdel still retained its essentially rural and agricultural character and was in no need of high density residential development.

The trial court viewed Strong's testimony as unimpressive and largely discounted it. It concluded that Holmdel was a developing community within the definition of that term given in So. Burl. Cty. N.A.A.C.P. v. Tp. of Mount Laurel, 67 N. J. 151, 160 (1975). "It is close to built-up urban areas. It has sizeable land area vacant. It is in the path of population influx. It has been experiencing development. As I have said, it has made a conscious effort to develop through commercial and industrial uses." We have concluded that sufficient evidence in the record supports this conclusion and we therefore accept it as valid. State v. Johnson, 42 N. J. 146, 162 (1964).

Holmdel is a municipality of sizeable land area, with considerable land yet available for development, which has demonstrated substantial, if not explosive, growth in population within recent years. More significant than mere numbers, however, it has actively sought industrial and commercial development and, until recently, was quite successful in this undertaking. Presently under construction is a facility for Prudential Insurance Company which will result in the creation of at least 650 additional jobs within the community.

Although the Township received assurances that most of those who will work for Prudential are local and presently housed in the area, it is reasonable nonetheless to assume that a substantial portion of those who come to work for the company will find themselves in need of local housing of the moderate and low income variety. A municipality cannot take an active role in the solicitation of industry and commerce without, to some degree, accepting responsibility for those who are drawn to the community as a result of its successful efforts in that endeavor.

We cannot, however, accept the formulaic approach adopted by the trial court when it ordered Holmdel to make provision in its zoning ordinance for 2100 housing units of the low or moderate income type. One must confront the substantial impact compliance with this order will have on the future development of this essentiall rural and agricultural community.

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5. We recognize, as did the court in Oakwood at Madison, Inc., supra, slip opinion at 36-38, that permitting "least cost" housing by way of zoning will not insure its construction. The fact that the ordinance may make provision for 2100 units does not mean they will be built. Nonetheless, it may well be that construction of housing will create a need rather than fill an existing one; that people may choose to live in Holmdel simply because housing has been made available in an attractive community and not because they would have chosen to live there for other reasons, such as employment and the like. Hence, care must be taken to avoid by zoning revision the creation of population pressures which otherwise would not have existed in any substantial degree.

As the trial judge noted, construction of the mandated number of units will more than double its present number of residential units and probably at least double its population. The units themselves, together with the supporting services and facilities they will require, will markedly alter the basic character of the community. If this requirement were demonstrated to have been in response to a present and compelling need for housing of this type, it would have to be tolerated, and as stated by the trial judge, "the municipality will just have to cope." Oakwood at Madison, Inc., supra, does not preclude a trial judge from setting quotas in appropriate circumstances. The record did not demonstrate a need of such compelling magnitude. There was no evidence of local residents living in squalor as there was in Mount Laurel. Indeed, the record is devoid of evidence that any of the local residents or employees were inadequately housed. Although we have no doubt that many low and moderate income families would choose, if they could, to live in Holmdel, that fact alone does not, in our view, create the imperative need which would justify the breadth of the order under challenge and the impact on this community which is the principal subject of this appeal.

It may be that the rate at which a particular municipality is developing, a reflection of the need for housing in the area, should govern to some extent the amount of housing for which provision should be made in its zoning ordinance. A municipality undergoing development of less than explosive proportions, although considered developing in the Mount Laurel context, may be required to make provision for fewer units of "least cost" housing than would a municipality resisting strong pressures for population influx by the exclusionary features of its zoning ordinance. Rate of development, and the need it reflects, may well be considered in the equation determining "fair share". The requirement for "least cost" housing may alter as rate of development changes; an ordinance is not immutable but must respond to changing needs and circumstances, need for housing being one of these circumstances.

Furthermore, the inadequate record in this case provides an illustration of the concern expressed in Oakwood at Madison, Inc., supra, slip opinion at 64-68, as to the essential justiciability of the issue being considered:

Of primary significance is the difference between the situation of an administrative planning agency functioning under authorizing legislation and that of a court dealing with an attack by litigation on the adequacy of the zoning ordinance of an isolated municipality. The former is dealing with a comprehensive, predetermined region and can render or delegate the making of allocations with relative fairness to all of the constituent municipalities or other subregions within its jurisdiction. Moreover, it presumably has expertise suited to the task. The correlative disadvantages of a court adjudicating an individual dispute are obvious.

The formulation of a plan for the fixing of the fair share of the regional need for lower income housing attributable to a particular developing municipality, * * * involves highly controversial economic, sociological and policy questions of innate difficulty and complexity. Where predictive responses are called for they are apt to be speculative or conjectural. These observations are supported not only by the published literature but by the proofs and comprehensive briefs supplied us by the parties and amici.

* * * We take this occasion to make explicit what we adumbrated in Mount Laurel and have intimated above - that the governmental-sociological-economic enterprise of seeing to the provision and allocation throughout appropriate regions of adequate and suitable housing for all categories of the population is much more appropriately a legislative and administrative function rather than a judicial function to be exercised in the disposition of isolated cases.

See also, Oakwood at Madison, Inc., supra, J. Mountain's concurring and dissenting opinion, slip opinion at 6-12. Of course, where the Legislature defaults in performance of this obligation and the need for a solution to an evident problem is clear, the courts

have no alternative but to step into the void and do the best they can, with the facilities available, to reach a considered solution to the problem.

Nonetheless, the record here discloses the disadvantages under which courts work in attempting to cope. Two experts are chosen to address the problem and offer solutions thereof. One is selected by plaintiff, a developer owning land in Holmdel, who, although technically invested with standing, has no real stake in the position he advocates with respect to the overall validity of the ordinance. The testimony of that witness, which provides the sole basis for the order under consideration, consumed in total about 60 transcript pages. Of these 60 pages, five were devoted to a recitation of his qualifications necessary to an evaluation of its weight, but minimally relevant to the important issues in the case. Of the remainder of his testimony, a substantial portion is devoted to the issue concerning the alleged confiscatory effect of the ordinance on plaintiff's land, an issue of understandably greater concern to the plaintiff who produced him as a witness. The hard core testimony devoted to the issues with which we are here concerned, and which was of such vital import to the citizens of Holmdel, consumed only a few pages of transcript. While we do not suggest that the value of testimony he evaluated solely with respect to its length, there is little hard information contained in that

testimony which would in any way justify the drastic action taken in sole reliance on it. Thus, although Moscowitz sets forth Holmdel's appropriate region as Monmouth County as a whole, the only factual basis offered for that crucial conclusion is the fact that 70% of the people living in Monmouth County work there. Although that fact is consistent with the conclusion, it does not compel it. All it shows is the generally accepted view that most people live near their work, and hence provides at least equal support to Strong's view of what the appropriate region would be, those areas within a 30-minute drive of Holmdel. Moscowitz was not asked his view of Strong's region (Strong testified after Moscowitz, and no one recalled Moscowitz to ask him), and hence we have no joining of that issue, no expert comment upon the views of another expert in a critical area. Indeed, Strong was not asked to comment upon Moscowitz' theory and, consequently, all of the theories passed each other, as it were, like ships that pass in the night. Moreover, it is clear from the inadequate testimony that was produced that selection of the appropriate region had a tremendous impact upon the final result. Monmouth County as a whole has only 43,000 rental units; Strong's region has 125,000. That fact alone suggests a substantial difference in Holmdel's share of the region even without information concerning the vacancy rate in that area, another missing but crucial fact.

Strong's testimony was not much more helpful, although since given in support of an essentially negative view it is probably deemed sufficient by the Township. Still, from a court's point of view, essential data necessary to a reasoned conclusion in which some confidence could be reposed was missing.

These two witnesses, whose essential testimony could not have consumed more than a few hours, provided the only information upon which the drastic order portending a substantial change in the future development of Holmdel appealed from was based. What information was provided has to be viewed as largely speculative and conjectural, as recognized in Oakwood at Madison, Inc., supra, slip opinion at 64-68, and hardly the material on which can be based as broadly drafted an order as that before us.

We find Moscowitz' selection of Monmouth County as the region to whose housing needs Holmdel must contribute its fair share as entirely too suspect to warrant our support. Mount Laurel intimated that politically drawn county lines can rarely and realistically be deemed coincident with a region. 67 N. J. at 189-90. Nothing in the record suggests that Holmdel provides the exception. Oakwood at Madison, Inc. concluded that "there is no specific geographical area which is necessarily the authoritative region as to any single municipality in litigation." Id., slip opinion at 75.

Experts differ in their concepts of what considerations suggest a particular delineation of region. Several of those concepts are described in Oakwood at Madison, Inc. and will not be repeated here. Id., slip opinion at 76, n. 44. Oakwood at Madison, Inc. approved the trial court's delineation of the appropriate region for Madison Township, which was "the area from which, in view of available employment and transportation, the population of the township would be drawn absent exclusionary zoning." [Id., slip opinion at 71]. Although the Oakwood at Madison, Inc. court declined to define a region within the Mount Laurel context, and declined to require a trial judge to do so, nonetheless it did set forth its concept of a region, in substance accepting the trial court's view of the matter when it said:

> The region * * * is that general area which constitutes, more or less, the housing market area of which the subject municipality is a part, and from which the prospective population of the municipality would substantially be drawn, in the absence of exclusionary zoning. [Id., slip opinion at 81].

These definitions of region suggest the deficiencies in the present record to which we have already alluded. None of the experts here approached the problem of "region" in those terms; "available" employment was not referred to, although the factor of existing jobs was repeatedly explored. Arteries of transport throughout Monmouth County, the area selected as the "region" also received little mention. No light was shed on the probable areas from which

Holmdel's future population would be drawn and the percentage of low and moderate income families which could be expected from that influx. In short, the record was inadequate to support the most critical conclusion reached, delineation of the region to which Holmdel would be required to contribute its fair share of lower and moderate income housing.

With our rejection of that finding, the remainder of the trial court order falls. Determinations of fair share allocation can only be assessed with reference to a particular region; without the data necessary for such a determination, the fair share allocation is without meaning.

Nonetheless, and because of our acceptance of the trial court finding that Holmdel is a developing community with an obligation to make provision in its zoning ordinance for areas in which low and moderate income housing, or in the terms of Oakwood at Madison, Inc. "least cost" housing, can be located, it is clearly in order for Holmdel to make certain zoning revisions. The amount of land so zoned and its location will, in the first instance, be committed to the good faith discretion of the governing body with whatever expert assistance they deem necessary, but under trial court supervision. The land so zoned to accommodate this mandated housing must, of

necessity, be open and available land. Land suitable for food production should not have first priority as appropriate for high density housing; food may be as important as housing, if not to the local population, then to the country at large. The land selected should be appropriate to "least cost" housing and should not present unusual topography of soil conditions productive only of increased housing costs. Consideration must be given to those persons presently working in the town who cannot afford to live there and to those who may be drawn by industrial or commercial enterprises planning to locate themselves in Holmdel; attraction of ratables carries with it an obligation to provide for those drawn by them to the town. Some attempts must be made to determine the needs of the locally housed elederly and young, and those of both categories who may be drawn to the town by employment or other factors. Size of the units zoned and other amenities should be determined with respect to the requirements of "least cost" housing mandated by Oakwood at Madison, Inc., supra. Ecological and recreational needs must also receive consideration.

By suggesting certain factors which should be borne in mind by the municipal draftsmen, we do not, of course, exclude other factors which may surface during revision. Whatever considerations, however, are reflected in the final product, the revision

must comport with the mandate of Mount Laurel, explained in Oakwood at Madison, Inc., which is to make provision for adequate least cost housing sufficient to satisfy Holmdel's fair share of the region's need in that regard.

Although we decline to set a numerical goal as to the number of least cost units for which provision must be made, the revision must allow for a meaningful infusion of such housing in areas of the Township suitable to that kind of development. Since all predictions of present and future needs are to some extent speculative, and on the record before us even more so, the approach must perforce be on a trial and error basis; no scheme of zoning need be regarded as immutable. As needs become apparent, provision to satisfy them can be made, if not by the Township then by the court, or a legislative body more suitable to the task.

The case will therefore be remanded to the trial court for its continued supervision of Holmdel's efforts to bring its zoning ordinance into compliance with the requirements of Mount Laurel and Oakwood at Madison, Inc. The time within which the revision

must be completed and presented to the court is within the trial court's discretion. Nothing in this opinion should be understood as foreclosing the reopening of proceedings for additional testimony bearing directly on the problems confronting Holmdel in drafting its revision, particularly in light of the requirements contained in the intervening opinion in Oakwood at Madison, Inc.

II.

Plaintiff's appeal from denial of the variance and from the trial court's refusal to invalidate the ordinance as it affects plaintiff's land.

We affirm the trial court's resolution of both issues for reasons stated by the trial court in its oral opinions of May 13, 1976 and May 15,1976.

Some comment is in order with respect to plaintiff's contentions, urged on this appeal, based upon the recent Oakwood at Madison, Inc. case, that because of its long term efforts with respect to Holmdel's ordinance, special dispensation should be made so as to make possible the construction of the project rejected by the Zoning Board of Adjustment. We view that relief as inappropriate in the circumstances of this case. The litigation

in this case, to date, has not been nearly as protracted as in Oakwood at Madison, Inc., supra. Plaintiff's initial forays into litigation were solely for its own benefit, when it unsuccessfully sought a variance. The decision of the Zoning Board of Adjustment was affirmed by the trial court and now by us. Nor did plaintiff prevail with respect to the other issue which directly concerns it, that the Holmdel zoning ordinance as it affected its land was confiscatory. That issue, also, was litigated solely for plaintiff's benefit. We have here affirmed the trial court disposition of that claim. With respect to the challenge to the validity of the ordinance, plaintiff has been successful, but only in part. The proceedings upon which the trial court judgment was based were not lengthy, consuming only three days of testimony. Although the appellate proceedings were unfortunately delayed because of the developing nature of the law involved, plaintiff's participation in no way approaches what was involved in the Oakwood at Madison, Inc. case where plaintiff continually succeeded on an issue of public import. We do not conceive Oakwood at Madison, Inc. as automatically mandating favorable treatment of any developer who successfully launches an attack on a municipality's zoning ordinance. To the contrary, Oakwood at Madison, Inc. makes clear that such special dispensation will be made available only in the rare case. This is not such a case.

In summary, the portion of the judgment declaring Holmdel a developing municipality with an obligation to provide least cost housing sufficient to meet its regional fair share of such housing needs is affirmed, and those portions affirming the denial of plaintiff's variance and rejecting plaintiff's contention that the zoning ordinance is invalid as it affects plaintiff's land are affirmed. That portion ordering Holmdel to rezone to permit construction of 2100 units for low and moderate income families is vacated. The matter is remanded to the trial court for further action consistent with this opinion.

We do not retain jurisdiction.

A TRUE COPY

Elizabeth M. Langhlin

Clerk